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Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights

Report submitted by Ms. Fatma-Zohra Ouhachi-Vesely, Special Rapporteur, in accordance with Commission resolution 2003/20*

* The endnotes are circulated as received, in the language of submission only.

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Executive summary

This report is submitted pursuant to Commission resolutions 1995/81, 1996/14, 1997/9, 1998/12, 1999/23, 2000/72, 2001/35, 2002/27 and 2003/20. The Special Rapporteur has already submitted a preliminary report (E/CN.4/1996/17) and progress reports (E/CN.4/1997/90, E/CN.4/1998/10 and Add.1, E/CN.4/1999/46 and E/CN.4/2000/50, E/CN.4/2001/55 and Add.1, E/CN.4/2002/61 and E/CN.4/2003/56 and Add.1 and 2).

She has undertaken missions to Africa, South America and Europe: in 1997 she visited South Africa, Kenya and Ethiopia (E/CN.4/1998/10/Add.2); in 1998, Paraguay, Brazil, Costa Rica and Mexico (E/CN.4/1999/46/Add.1); and in 1999, the Netherlands and Germany (E/CN.4/2000/50/Add.1). She made no in situ visits in 2000. In 2001 she visited the United States of America (E/CN.4/2003/56/Add.1); in 2002, Canada (E/CN.4/2003/56/Add.2); and in 2003, the United Kingdom of Great Britain and Northern Ireland (E/CN.4/2004/46/Add.1).

The main report is supplemented by an addendum containing the general observations communicated to the Special Rapporteur (chap. I), new cases received (chap. II) and a summary of the cases submitted in the last three years (chap. III). Addendum 2 provides an account of the mission to the United Kingdom.

The report consists of six chapters dealing with the activities of the Special Rapporteur. Chapter II describes new national, regional and international developments.

Chapter III contains an analysis of trends. The nature of the problem has not basically changed, despite efforts by the international community to combat the phenomenon.

International movements of wastes have increased via "recycling" programmes that make it possible to circumvent the ban imposed by the 1989 Basel Convention. While reported cases of transfers of wastes from developed to developing countries have declined, the problem has not disappeared, given the persistence of clandestine movements and exports in the guise of recycling.

Added to this is the emergence of new phenomena such as the export of contaminated vessels to developing countries for ship-breaking, trade in electronic waste, the transfer of industries producing large quantities of waste and an increase in the use of pesticides and other chemicals. Products that are banned, taken off the market, strictly regulated or not permitted in industrialized countries continue to be produced and exported to developing countries with incentives to consume them (advertising, linking of project financing and aid, falsification of data).

The cases reported constitute a record of violations of the exercise and enjoyment of basic rights such as the right of peoples to self-determination and permanent sovereignty over national resources, the right to development, the rights to life, health, sufficient food, safe and

healthy working conditions, housing, information, participation, freedom of association, the right to form and join trade unions, the right to strike and to bargain collectively, the right to social security, the right to enjoy the benefits of scientific progress and other rights enshrined in the Universal Declaration and other international instruments. The illustrations given (right to life, right to health, right to information, freedom of association, assembly and expression, right of participation, as well as racism and discrimination) reflect the difficulties faced by the victims in obtaining justice and reparation.

In her recommendations in chapter VI, the Special Rapporteur welcomes the positive developments that have occurred through legislative measures, but calls on States to ratify the international conventions, to cooperate fully in implementing them and to reinforce the capabilities of the secretariats of the international conventions.

Domestic and international regulations should be provided with effective monitoring and implementation mechanisms. The promulgation of stringent laws to control transboundary movements should continue.

States should take more vigorous measures to reduce waste production, combat new flows of illicit trafficking and resolve the challenges posed by chemicals.

The Special Rapporteur requests that chemicals that have been banned or taken off the market in developed countries should no longer be produced for export. She reiterates her conviction that this practice is unlawful in the light of human rights standards.

The domestic capacities of developing countries should be strengthened through financial assistance, technology transfers and diversified technical assistance.

Mutual legal assistance and exchange of information should be facilitated to counter fraud, corruption and organized trafficking networks.

Governments should take steps that include administrative, civil and criminal penalties for individuals, enterprises and transnational corporations involved in illicit trafficking. Special efforts should be made to end impunity. Victims should have access to administrative and judicial procedures of the exporting State.

Domestic compensation funds should be established along with independent national commissions of inquiry endowed with judicial or quasi-judicial powers in alleged cases of illicit transfer or attempted illicit dumping.

States should strengthen the role of national environmental protection agencies and of non-governmental organizations (NGOs), local communities and associations, trade unions, workers and victims and provide them with the legal and financial means to act. The right to information and participation, freedom of expression, the right of association and legal remedies should be consolidated.

The Commission on Human Rights should consider means of implementing the Norms on the Responsibilities of Transnational Corporations adopted by the Sub-Commission and continue its codification efforts with a view to the adoption of a binding legal instrument. Cooperation between the Office of the United Nations High Commissioner for Human Rights and the United Nations Environment Programme and the secretariats of the multilateral environmental conventions should be strengthened and human rights bodies should be more systematic in addressing violations of rights associated with the practices of multinational companies, toxic waste and other environmental problems.

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Introduction

1. In 1995, at its fifty-first session, the Commission on Human Rights adopted its first resolution specifically concerning the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights. Ms. Fatma-Zohra Ksentini (now Ms. Ouhachi-Vesely) (Algeria) was appointed Special Rapporteur pursuant to resolution 1995/81, which was approved by Economic and Social Council decision 1995/288. The Commission urged the Special Rapporteur to undertake a global, multidisciplinary and comprehensive study of existing problems and solutions in particular in developing countries, with a view to making concrete recommendations and proposals on adequate measures to control, reduce and eradicate these phenomena.

2. The Commission has since adopted a resolution each year on toxic wastes and human rights (1996/14, 1997/9, 1998/12, 1999/23, 2000/72, 2001/35, 2002/27 and 2003/20). The Special Rapporteur has submitted a preliminary report (E/CN.4/1996/17) and progress reports (E/CN.4/1997/19, E/CN.4/1998/10 and Add.1, E/CN.4/1999/46, E/CN.4/2000/50, E/CN.4/2001/55 and Add.1, and E/CN.4/2002/61). She has also conducted in situ visits to countries in Africa, Europe and North and South America: in 1997, she visited South Africa, Kenya and Ethiopia (see E/CN.4/1998/10/Add.2); in 1998, Paraguay, Brazil, Costa Rica and Mexico (see E/CN.4/1999/46/Add.1); in 1999, she visited the Netherlands and Germany (see E/CN.4/2000/50/Add.1). She made no visit in 2000. In 2001, she visited the United States of America (E/CN.4/2003/56/Add.1); in 2002, Canada (E/CN.4/2003/56/Add.2); in 2003, the United Kingdom of Great Britain and Northern Ireland (E/CN.4/2004/46/Add.1).

3. In its resolution 2000/72, the Commission invited the Special Rapporteur to include in her report: (a) comprehensive information on persons killed, maimed or otherwise injured in developing countries; (b) the question of impunity, including racially motivated discriminatory practices, and recommendations regarding measures to end impunity; (c) the question of rehabilitation and assistance to victims; and (d) the scope of national legislation. In its resolution 2001/35, the Commission reiterated those requests and asked for comprehensive information on fraudulent waste-recycling programmes, the transfer of polluting industries, industrial activities and technologies from the developed to developing countries, ambiguities in international instruments, and any gaps in the effectiveness of the international regulatory mechanisms. In its resolutions 2002/27 and 2003/20, those requests were reiterated by the Commission.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Missions

4. In May-June 2003, the Special Rapporteur went on a mission to the United Kingdom of Great Britain and Northern Ireland (see E/CN.4/2004/46/Add.2).

B. Meetings

5. During her visit to Geneva from 1 to 4 April 2003 to present her report to the Commission, the Special Rapporteur held bilateral consultations with the secretariat of the Basel Convention and with the Chemicals Division of the United Nations Environment Programme.

She was invited to speak at a parallel event organized by the Environment Group of the International Council of Women, on the impact on women of the issues of concern to her mandate. She participated in bilateral consultations with other NGOs.

6. She took part in the tenth annual meeting of Special Rapporteurs of the Commission in Geneva from 23 to 27 June 2003.

7. On 30 June, she participated in a meeting for Special Rapporteurs, organized jointly by UNAIDS and OHCHR.

II. LEGAL FRAMEWORK

A. International instruments

8. The human rights treaties most relevant to the mandate continue to be the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as other human rights instruments and standards listed in the reports (see in particular E/CN.4/1996/17, paragraphs 125-126, and E/CN.4/2001/55, paragraphs 11-12).

9. With regards to Multilateral Environment Agreements, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal[1] and the Amendment to the Convention[2] has been analysed in several reports together with other international and regional instruments such as the Bamako Convention (see in particular E/CN.4/1996/17, paragraphs 29-70; E/CN.4/1997/19, paragraphs 79-81 ; and E/CN.4/2001/55, paragraphs 10-11).

B. New developments

10. **The Rotterdam Convention** on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade[3] constitutes another key instrument (see document E/CN.4/2000/50, paragraphs 40-54). The Convention, which has primarily been ratified by developing countries, shall enter into force on 24 February 2004. It "provides countries with a major tool to reduce the risks associated with pesticide use", according to the Director-General of the Food and Agriculture Organization of the United Nations who underlined the fact that "inappropriate pesticides and their misuse still threaten health and environment in developing countries". The Executive Director of UNEP considers that this new regime offers tools "to protect … citizens, clean up obsolete stockpiles of pesticides and strengthen … chemicals management".[4]

11. **The Stockholm Convention** on Persistent Organic Pollutants (POPs)[5] has the potential to address serious issues of concern to developing countries. Both from her field missions and from the communications received, the Special Rapporteur has become aware of the grave

impact on the right to life and on many other fundamental human rights that the exposure to POPs has on victims (for previous analysis, see in particular E/CN.4/2001/55, paragraphs 63 and 71; E/CN.4/2002/61, paragraphs 9 and 43; E/CN.4 /2003/56, paragraphs 31-33).

12. **A mechanism for promoting compliance and implementation with the Basel Convention** was adopted by the Conference of Parties in December 2002. NGOs are not permitted to make direct submissions of non-compliance against parties.

13. **The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters**[6] links environmental rights and human rights, and government accountability and environmental protection.

- The Convention adopts a *rights-based approach*: Article 1 requires parties to guarantee rights of access to information, public participation in decision-making and access to justice in environmental matters. It refers to the goal of protecting the right of every person of present and future generations to live in an environment adequate to health and well-being;
- It establishes *minimum standards* to be achieved without preventing any party from adopting more elaborated measures. The Convention *prohibits discrimination* on the basis of citizenship, nationality or domicile against persons seeking to exercise their rights under the Convention;
- The Convention is open to accession by *non-ECE* countries, subject to approval of the Meeting of the Parties.

14. A Compliance Committee has been set up.[7] Members of the public, including NGOs, can present communications.

15. **The Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights,**[8] adopted by the Sub-Commission on the Promotion and Protection of Human Rights, provide that these entities have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights including the rights and interest of indigenous peoples and other vulnerable groups. Article 14 refers to the environment, human rights, public health and safety and the precautionary principle.

16. **The Plan of Implementation adopted at the World Summit on Sustainable Development**, held in Johannesburg, South Africa, in September 2000, referred to human rights and freedoms as essential for the full achievement of sustainable development and recognized the link between human rights and environmental issues.[9] The plan addressed the issue of chemicals, calling on States to renew the commitment to the sound management of chemicals and of hazardous wastes throughout their life; and to promote the ratification and implementation of the relevant international instruments.

C. National legislation

17. The Special Rapporteur provided regular updates on national legislation and domestic measures to combat illicit traffic when summarizing information, communications, complaints and replies submitted to her. Field visit reports also outline developments in national legislation based on the experiences of the countries visited (see reports referred to in paragraph 2 above).

18. In a study on human rights and the environment conducted under the auspices of the Sub-Commission on the Promotion and Protection of Human Rights, the Special Rapporteur reviewed developments in national legislation and practices as well as in human rights jurisprudence.[10]

19. An OHCHR/UNEP meeting of experts on human rights and the environment, organized in January 2002, reviewed national developments. The experts found that the right to a healthy environment has been recognized in most national constitutions enacted since 1992. There has been a growing domestic case law indicating the potential role of environmental rights in the protection of human rights.[11] The experts also noted the case law and decisions from international human rights bodies that recognize the violation of a fundamental human right as the cause, or result, of environmental degradation. A number of decisions at the international and regional levels have identified environmental harm to individuals or communities, especially indigenous peoples, arising as a result of violations to the right to life, health, self-determination, food and water, and housing.[12]

III. TRENDS IN THE ILLICIT TRAFFIC AND DUMPING OF TOXIC AND DANGEROUS PRODUCTS AND WASTES

A. General observations

20. Many of the characteristics of illicit traffic identified in the previous reports remain valid and those reports provide comprehensive analysis and background information.

21. The amount of waste subject to transboundary movement is increasing even if the number of reported cases has diminished. The general trend is dominated by a steady increase of movement among developed countries, particularly European Union countries.[13] The Ban Amendment to the Basel Convention is not yet in force, but there has been a de facto ban on waste transfers from developed to developing countries, with a number of national and regional import and export bans. Today the number of reported waste transfers from developed to developing countries has dwindled to just a few per year.[14]

22. However, hazard transfer is dynamic and efforts to stop one form prompt new forms to emerge. For instance, laws intended to ban the disposal of toxic wastes in developing countries have led corporations to ship by-products to developing countries for "recycling". According to the Basel Convention secretariat, the largest amounts of exported wastes from industrialized to developing countries are exported for recovery.[15] Waste trade for recycling is either "sham recycling" where wastes are not really recycled, but simply burned or dumped, or "dirty recycling" which involves polluting operations.[16] In her previous reports, the Special Rapporteur

has identified various other forms of trade in hazardous wastes for recycling or further use: bogus recycling; hazardous recycling operations such as incineration plants, lead recycling factories, export of plastic residues containing hazardous substances, export of ships for recycling operations; export of waste-intensive polluting industries; export of pesticides and other chemical and pharmaceutical products (see E/CN.4/1997/17, paragraphs 73-102 and E/CN.4/2000/55, paragraphs 22-36).

23. Hazardous waste recycling has proven to be difficult even in developed countries (for example, 11 per cent of United States Superfund priority sites slated for clean-up were caused by recycling operations[17]). It is more difficult for developing countries which lack the adequate technology. It involves infrastructure to provide emergency response, roads and services to ensure safe transport, and medical facilities to monitor worker and community health. It implies the public and workforce have the democratic capability to redress environmental concerns and to protest hazardous working or living conditions.[18]

24. The increased fluidity of trade in today's global marketplace has been a channel for the movement of hazardous wastes. Lower transportation and communication costs, the difficulties in checking every container have facilitated the transfer of hazards. States have adopted more liberal trade policies. As wastes have been disguised as other products or are sent abroad for recycling, detection of these shipments has become more difficult.[19] In her previous reports, the Special Rapporteur identified several factors which were contributing to illicit traffic (see E/CN.4/1996/17, paragraphs 103-115 and E/CN.4/2001/55, paragraphs 37-42).

25. Illegal movements escape from the control mechanisms and therefore are not reported unless discovered. Many cases of illegal traffic take the form of deliberate mixing of hazardous with non-hazardous wastes. Other cases involve money laundering activities and illegal trade in arms. There have also been cases of ships containing waste cargo wandering the world's oceans, seeking ports to discharge their waste cargos.[20]

26. Environmental crime is one of the most profitable and fastest growing areas of international criminal activity. According to a 2000 United States Government report, criminal organizations earn US$ 10-12 million per year for dumping trash and hazardous waste materials.[21] The Basel Convention and Interpol (the International Criminal Police Organization) participate in international conferences aimed at raising awareness on environmental crime. With a focus on training border guards to better spot and apprehend criminals trafficking in "environmental commodities", UNEP launched the "Green Customs Initiative" in 2003 with a dedicated web site.[22]

27. As noted in her previous reports, international and regional trade liberalization rules impact on the efforts to limit illicit traffic. More recently, during her missions to the United States and Canada, the Special Rapporteur heard concern expressed about a danger that the drive to reduce barriers to trade in goods might lead to a pressure on countries to relax their export and import regulations on toxic and dangerous products and wastes. While the North American Free Trade Agreement (NAFTA) expressly allows its States parties to adopt and enforce measures aimed at protecting the environment,[23] the developing jurisprudence under Chapter 11 of NAFTA appears to suggest that domestic environmental regulations can be considered "trade-restrictive".[24]

28. Current negotiations at the World Trade Organization (WTO) on the relationship between WTO rules and multilateral environmental agreements[25] also give cause for concern. Some NGOs allege that the negotiations may allow the WTO to encroach upon areas of international environmental policy, allowing for the subordination of international environmental governance to economic and trade considerations.[26] Secretariats of multilateral environmental agreements (MEAs) are not involved in these negotiations. It is recommended that negotiations about the relationship of WTO rules and MEAs be transferred to the United Nations, strengthening existing initiatives by UNEP and other United Nations agencies, and providing full participation of MEA secretariats.

B. New trends

1. Export of electronic waste to developing countries for "recycling"

29. The Special Rapporteur continues to receive communications regarding the export from industrialized countries of hazardous electronic wastes ("e-wastes") for recycling in developing countries, particularly in Asia. E-wastes encompasses a broad and growing list of electronic devices ranging from large household appliances such as refrigerators, air conditioners, as well as hand-held cellular phones, personal stereos, and consumer electronics to computers. It is estimated that by 2007, there will be more than 700 million "obsolete" computers in the United States alone.[27]

30. Heavy metals such as lead, beryllium, mercury, cadmium, and brominated-flame retardants are released in the process of breaking down old computers and other high-tech devices. An average computer monitor may contain up to eight pounds (3.6 kilos) of lead.[28]

31. Reports and complaints detailed the impact on the communities in developing countries who are left to dismantle e-waste in a way which is unsafe and not managed in an environmentally sound manner. The conditions are extremely hazardous and include open burning, acid baths and toxic dumping which pours pollution into the land, rice fields, air, irrigation fields and along waterways and drinking water supplies. Such improper disposal poses a threat to human health, leading to respiratory illness, skin infections and stomach disease. Some reports refer to children being involved in the dismantling of e-waste. The workers and their communities seem not to be adequately informed about the nature of the products they are handling and the potential risks to life, health and livelihood.

32. Many e-waste recyclers use the label of "recycling" in order to export obsolete products directly, or indirectly through brokers. Informed recycling industry sources estimate that between 50 to 80 per cent of the e-waste collected for recycling in the Western part of the United States are not recycled domestically, but quickly placed on container ships bound for destinations in Asia.[29]

33. The parties to the Basel Convention have decided to make the issue of used computers a priority. Meeting the challenge they pose will require action by Governments, industry, consumers, IGOs, NGOs and the Secretariat of the Basel Convention.[30]

34. Obsolete mobile phones also pose a problem. By 2005, more than 130 million mobile phones will be retired annually in the United States alone. In December 2002, the major manufacturers of mobile phones publicly declared their commitment to work further with the Basel Convention and other stakeholders in improving the sound environmental management of mobile phones. The first meeting of the Basel Convention mobile phone working group took place in April 2003 in order to develop a work programme for a mobile phone partnership initiative.

35. For its part, the European Union banned the export of all hazardous e-wastes by implementing the Ban Amendment to the Basel Convention. It passed directives forcing industry to manage the end-of-life of e-wastes.[31] The directives require member States to set up systems for separate collection of waste electronic equipment.

2. Ship-breaking

36. The Special Rapporteur continues to receive complaints and reports on export of obsolete ships for dismantling in developing countries. While this is a practice commonly used for many years, it has recently come under scrutiny.

37. Dismantling ships can bring economic benefits. Most ships are about 80-90 per cent steel, which can be sold as scrap metal for reprocessing, while other valuable components can be recycled. However, when old ships are decommissioned and taken apart, there are toxic components that must be disposed of, including asbestos, PCBs, and toxic metals such as mercury and lead. About 5 per cent of the total weight of an average ship[32] can be a significant source of hazards. This is particularly true in ship-breaking yards in developing countries, where precautions are much less strict than in similar operations in industrialized countries.

38. Since 1998 there have been numerous reports regarding worker and environmental safety issues at ship-breaking yards. The ships are dismantled on Asian beaches and along rivers, releasing toxic substances into the soil, the sea and rivers. The industry is reported to be one of the most deadly in the world. Workers, in some instances, dismantle the ships with their bare hands; many workers are injured or killed by suffocation or explosions; and many workers are expected to contract cancer due to their exposure to asbestos dust and toxic fumes. A conservative estimate is that more than 100,000 workers in the ship-breaking countries are directly exposed to workplace and environmental poisons during the breaking of contaminated ships for scrap.[33] Communities are also affected by loss of livelihood when soil or fish stocks become polluted, and by the deaths and diseases caused by exposure to toxic substances.

39. International initiatives aimed at addressing the issue have been under way in the past years. In 2002, the Basel Convention Conference of Parties adopted guidelines which detail procedures and good practices for decommissioning and selling obsolete ships, dismantling them, sorting the parts (for reuse, recycling and disposal), identifying potential contaminants, preventing toxic releases, monitoring environmental impacts, and responding to emergencies and

accidents. They also address the design, construction and operation of ship-dismantling facilities. Although it is not a legally binding instrument, it provides some guidance for those engaged in the practice and government regulation.[34]

40. In October 2003, the Open-ended Working Group of the Basel Convention noted that the Basel Convention also applies to the export of end-of-life vessels for breaking - a decision which was hailed by some NGOs as an important breakthrough.[35] Basel parties and environmental groups acknowledged that ships destined for breaking in other countries may be subject to control under the Basel Convention.[36]

41. In 2003, the International Labour Organization adopted guidelines for safer working conditions. Although voluntary, they represent a first step in providing a framework for safe working practice, procedures and regulations where they do not already exist. The ILO guidelines complement IMO's standards for ships and the Basel Convention guidelines.

42. The International Maritime Organization has drafted guidelines on ship recycling, to be adopted by November-December 2003. A "green passport" for ships containing an inventory of all materials potentially hazardous to human health or the environment, used in the construction of a ship, would accompany the ship throughout its working life. Produced by the shipyard and passed to the purchaser of the vessel, the document would be in a format enabling any subsequent changes in materials or equipment to be recorded. Successive owners of the ship would maintain the accuracy of the Green Passport and incorporate into it all relevant changes, with the final owner delivering it, with the vessel, to the recycling yard.

43. Advocacy groups are encouraged by the guidelines but claim that only a legally binding instrument, which incorporates the Basel Convention obligations, will stop ship-owners from choosing the most profitable option and selling their ships to the least regulated countries.[37]

3. Pesticides and other chemical products

44. The human rights impact of pesticides is another issue of major concern.

45. The consumption of industrially produced chemicals has skyrocketed over the past decades to be at about 400 million tons a year.[38] The chemicals industry is an important part of the world economy, accounting for 7 per cent of income and 9 per cent of international trade.[39] Almost every country has a chemicals industry, yet almost 80 per cent of the world's total output is currently being produced by only 16 countries, overwhelmingly OECD members.[40]

46. Pesticides remain the most hazardous chemicals prone to cause epidemic incidents of poisoning, especially in developing countries.[41] An estimated 3 million reported cases of pesticide-associated acute poisoning occur annually, resulting in 220,000 deaths. Ninety-nine per cent of these occur in the developing world,[42] in spite of these countries accounting for only 20 per cent of global pesticide use.[43] In 1990, the World Health Organization *Statistics Quarterly* reported that an estimated 25 million agricultural workers are

poisoned by pesticides every year.[44] Up-to-date estimates are lacking, but today there are 1.3 billion agricultural workers[45] and it is likely that millions of pesticide poisoning cases still occur each year, for instance:[46]

- In 2000, Brazil's Ministry of Health estimated the country had 300,000 poisonings a year and 5,000 deaths from pesticides;[47]

- In an Indonesian study, 21 per cent of spray operations resulted in three or more neurobehavioural, respiratory, and intestinal signs or symptoms;[48] and

- In a United Nations survey, 88 per cent of pesticide-using Cambodian farmers had experienced symptoms of poisoning.[49]

47. WHO identified some of the main obstacles to sound management of chemicals in countries: a lack of knowledge of the risks that many chemicals pose to human health and the environment; a lack of capability and capacity, particularly in developing countries, to manage chemical risks; a lack of technical means to assess the local risks from chemicals and of adequate administrative infrastructure for implementing chemical safety programmes; inadequate information for users of chemicals, especially insufficient internationally harmonized labelling of chemicals; and lack of means of coping with chemical accidents.[50]

48. The International Code of Conduct on the Distribution and Use of Pesticides, negotiated through the FAO, sets guidelines to safeguard against health and environmental hazards.[51] The Code of Conduct recommends that World Health Organization Class Ia, Ib and, preferably, Class II pesticides should not be used in developing countries. However, such chemicals remain widely available in these countries.[52] Many of the transnational corporations producing pesticides and members of the industry association CropLife International have indicated that they will stop sales of Ia and Ib pesticides, but have not yet done so.[53]

49. The Special Rapporteur continues to receive reports about export of pesticides and other chemicals from developed to developing countries which have been banned in their countries of origin.[54] United States Customs records reveal that 3.2 billion pounds (about 15 million kg) of pesticide products were exported in 1997-2000, with nearly 65 million pounds (30 million kg) of the exported pesticides being either forbidden or severely restricted in the United States (however, no banned pesticide export was recorded for the year 2000).[55]

50. The populations affected are poor and disadvantaged, and unable to take essential precautions. They have no influence over policy and decision makers, and face difficulties when trying to get access to justice. Rural populations generally have less political leverage than the more visible poor in urban areas, emphasizing the importance of Governments taking a rights-based approach when assessing agricultural and development policies.[56]

51. Rural poverty with pesticide exposure is also an issue of women's and children's rights. Women in developing countries produce between 60 and 80 per cent of food, and bear an immense workload. However, the exposure of women to pesticides tends to be underestimated,

as policy makers and trainers often ignore the contribution of women farmers. The majority (70 per cent) of the world's working children are engaged in the agricultural sector and exposed to pesticides.[57] Other vulnerable groups like migrant workers are at particular risk from pesticide-related illness[58] (see the Special Rapporteur's reports from field missions and the cases submitted to her attention).

52. The vulnerable groups are not able to take direct action to prevent harm, or to seek legal redress. The industries are insulated from legal action and in the rare cases where communities have initiated claims the time scales for compensation can exceed a working lifetime (see in particular the Special Rapporteur's findings on the human rights impacts and impunity, E/CN.4/2001/5, paragraphs 58-78). Poor individuals and communities face difficulties to trace and hold liable industries who have contributed to death, ill health, or environmental damage. When action is initiated, there is a lack of clarity about the legal forum, and an ability on the part of corporations to delay the outcomes indefinitely. Corporate mergers and takeovers, uncertain origins of products, and the increasing pesticide production by national companies in developing countries make action more difficult. Nevertheless, holding companies directly liable for harm will remain an important course of action, and victims may increasingly seek support from human rights and environmental lawyers in instances where claims seem likely to succeed.[59]

53. The safe disposal of hazardous pesticides remains an immense challenge. Discarded, leaking and corroding metal drums filled with obsolete and dangerous pesticides are common throughout the developing world, particularly in tropical countries.[60] Africa is thought to have 120,000 tons of obsolete pesticide stocks[61] and the issue was discussed during the First Continental Conference for Africa on Environmentally Sound Management of Unwanted Stocks of Hazardous Wastes and Their Prevention.[62] The cost of cleaning up the critically affected areas of the developing world could be as much as US$ 500 million.[63]

54. In October 2002, the Global Environment Facility (GEF)[64] gave phase one of the Africa Stockpiles Programme[65] its official endorsement, pledging US$ 25 million with the understanding that US$ 35 million in co-financing will be contributed by government aid agencies, the private sector, and other donors, and that participating donors will ratify the Stockholm Convention. This excellent start must be accompanied by the regulation of chemical industries supplying pesticides to developing nations.

55. According to the European Commission proposal presented on 29 October 2003, all chemicals manufactured within the European Union at over one ton would in future be required to be tested and registered through a new Registration, Evaluation and Authorisation of Chemicals (REACH) system. The aim is to improve human health and environment in the European Union by providing improved information and better management of chemicals in use through the supply chain. Potentially harmful chemicals must be classified as "substances of very high concern". However, such products will not automatically be banned. Instead the company producing it will have to demonstrate "adequate control" over its circulation, although the proposal does not define what is meant by "adequate control".

56. The proposal has been criticized by some NGOs which consider that the European Commission has put chemicals producers' interests before public health and the environment: two thirds of all chemicals on the registry might still not carry enough safety information; the NGOs feel that proposal overturns existing European Union principles on workers' protection and environment legislation.[66]

IV. TRANSNATIONAL CORPORATIONS

57. Previous Special Rapporteur reports provided analysis of the basic principles applying to transnational corporations and the role of such corporations in the area of her mandate.

58. She continues to receive complaints on irresponsible or illegal corporate behaviour which impacts on human rights.[67] The companies in question fail to respond in an adequate manner. Some companies fail to compensate or assist the victims; they evade obligations to remediate damaged environments; and they violate human rights by failing to monitor, report and provide essential information concerning their products and processes.[68]

59. Another aspect in many of the reported cases is the difference in behaviour of a company operating in a developed country which has relatively strict rules protecting people and the environment, and the behaviour of the same company in a developing country.[69] This has led to allegations of exploitation of people living under oppressive regimes and of people living in countries where health and safety and environmental protection standards are less stringent or less stringently enforced. Complaints about such double standards have arisen in relation to cases previously reported, for example that of Thor Chemicals in South Africa. The company closed its United Kingdom asbestos factories in 1968 because of intervention by the Health and Safety Executive, but continued operating in South Africa for a further 20 years, causing death and disability to many of its workers, as well as environmental devastation.[70]

60. The role of private corporations in economic development remains crucial but the importance of corporate accountability to society must be emphasized. Corporate accountability is fundamental to ensuring the balance between development, human rights and environment.

61. Some private companies still consider that their duty is to further only the interests of their shareholders. However, there is an emerging consensus that "companies should be held responsible for the impact on their stakeholders of operations over which they can exercise legitimate influence".[71]

62. In what is perceived by some to be an effort to prevent legally binding measures towards corporate accountability, the private sector increasingly engages in voluntary initiatives to foster corporate citizenship. The United Nations Global Compact aims to encourage the business community to build universal principles, including on human rights and environmental protection, into its strategic policies and daily practices. Voluntary initiatives like the Global Compact can help build consensus and may act as incentives to private companies to improve their human rights performance. However, such initiatives should not be perceived as an

alternative or substitute for legal accountability measures. Therefore, the Special Rapporteur welcomes the important step towards ensuring international accountability of private companies taken by the Sub-Commission, which adopted the Norms mentioned above.[72]

63. Efforts to ensure accountability in national law of transnational corporations have been hampered by the fact that, although corporations are subject to the domestic law of the countries in which they are based, transnational corporations - whose operations straddle national boundaries - have been able to elude legal responsibility; the parent company is based in one country and the operating subsidiary is based in another. The parent company contends that it is only a shareholder and cannot be held responsible for the wrongdoing of its subsidiaries. The concept of "corporate veil" is thus used to protect the parent. The subsidiaries are often virtually insolvent and uninsured.[73]

64. Civil cases brought against parent companies face the additional obstacle of *forum non conveniens*, a doctrine applied in some jurisdictions to shift cases brought within their jurisdiction to a more "appropriate" forum, which will tend to be the jurisdiction where the harm has occurred. This is often the jurisdiction of the asset-less and uninsured subsidiary in a developing country. In such cases, even if the victims were to receive a favourable judgement, their chances of achieving adequate compensation are slim.

65. Another obstacle is access to justice. In many developing countries there is no legal aid system and public interest lawyers operate on very limited budgets. It is difficult, if not impossible to run a complex case on that basis, on anything like a "level playing field" against a well-resourced transnational corporation. The funding problem is exacerbated by the corporate veil obstacle.[74]

66. During her visit to the United Kingdom, the Special Rapporteur was informed about three cases litigated over the last seven years which have developed English law with respect to access to justice for overseas victims of transnational corporations.[75] All three cases were compensation claims brought against the parent company of a transnational corporation in its home courts in England. The most recent judgement was given by the House of Lords in a case brought by more than 3,000 South African asbestos victims[76] and ruled that if a claimant can establish that there is no funding available to obtain legal and expert representation in his/her local courts, then the claim will be allowed to proceed in the English court which is the home court of the parent company.

67. In the United States, civil society groups are attempting to use the Alien Tort Claims Act (ATCA), dating from 1789, to sue American-based transnational corporations for damages for alleged violations outside of the United States of international law, including international human rights and environmental law. This development may add a new dimension to the enforcement of international law at the national level. While almost all of the cases filed under ATCA in the United States are still pending, there have been rulings in several key federal courts that suggest a strong potential for future ATCA litigation as a means of enforcing corporate accountability.

V. HUMAN RIGHTS IMPACT

68. The following developments, suggested by the recent cases brought to the Special Rapporteur's attention, supplement the analyses presented in earlier reports.

A. General considerations

69. These cases illustrate the correlation existing between illicit movements of wastes and human rights violations. On the one hand, illicit practices violate human rights such as the right to life and the right to health; on the other, the denial of rights such as freedom of expression, assembly and association or the right to information encourages illicit transfers, which in turn give rise to other human rights violations.

70. This correlation is linked to the problems of development and poverty. Developing countries are the first to be targeted. The most serious consequences are borne by poor populations: wastes are sent to poverty-stricken areas; the persons affected are the least equipped to realize the risks involved and to make use of legal remedies to assert their rights.

71. Other factors such as belonging to a deprived group (women, children, seasonal or migrant workers, indigenous populations, marginalized sectors, disabled persons) amplify the problem and exacerbate the repercussions on human rights by adding a discriminatory or racist dimension.

72. The cases reported constitute a record of violations of the exercise and enjoyment of basic rights such as the right of peoples to self-determination and permanent sovereignty over national resources, the right to development, the rights to life, health, sufficient food, safe and healthy working conditions, housing, information, participation, freedom of association, the right to form and join trade unions, the right to strike and to bargain collectively, the right to social security, the right to enjoy the benefits of scientific progress and other rights enshrined in the Universal Declaration and other international instruments.

73. Mention has been made of the forced displacement of populations and of the harassment and arbitrary detention of defenders of human rights and the environment.

74. Transnational corporations would appear to be involved in the violation of these rights; they are sometimes accused of collusion with repressive authorities.

B. Examples

1. Right to life

75. From a doctrinal point of view, the right to life is suprapositive. It is an *erga omnes* rule enforceable against anyone, even in the absence of a contractual obligation. It is one of the rules of *jus cogens* and thus one of the rights that, according to the International Covenant on Civil and Political Rights, are non-derogable. It is, furthermore, a right concerning which the Human Rights Committee has said that it "should not be interpreted narrowly" and that States must take positive measures, including "measures to reduce infant mortality and to increase life expectancy".[77]

76. In the Special Rapporteur's opinion, this right is enforceable against anyone who engages in practices which jeopardize or are likely to jeopardize life. Even where they are legal in terms of existing domestic regulations, such practices continue to be immoral and illicit in terms of human rights standards. The fact that legislation lags behind in addressing the problems and interests of victims should not serve as a pretext for engaging in practices that conflict with a norm of *jus cogens*.

77. In the cases considered, the violation of this right affects individuals, groups and entire communities. Reports include cases of instantaneous death and "slow death" as a result of serious damage to health (cancers and other incurable disorders), irreversible sterility, abortions and birth defects.

78. Violations of the right to life have a negative impact on the enjoyment of other rights such as the right to privacy, the right to found a family and to have children (cases of sterility, abortions), the right to information (workers exposed to serious hazards are not informed about them; the causes of illnesses are not revealed; the long-term effects are not recognized, ignored or obfuscated, as in the case of the exposure of women and children). Workers are laid off before the illness appears. Legal remedies are non-existent or ineffective.

2. Right to health

79. There is a clear link between wastes and toxic products and the right to health. All the cases reported stress this link and stigmatize practices that jeopardize this right, in particular:

- Waste recovery facilities which cause work accidents and expose populations to highly toxic fumes;

- Mining activities carried out by enterprises which do not respect the environment, pollute sources of drinking water and subject the population to serious risks;

- Intensive and unregulated use of pesticides, including exports of pesticides banned in producer countries. The World Health Organization estimates that 3 million people are poisoned and 220,000 killed by pesticides every year;

- Exports of medical waste carrying diseases against which populations have no immunity;

- Export of contaminated ships for breaking. It is estimated that at least one worker dies every day and that 25 per cent of the workforce develops cancer in the medium term;

- Export of electronic waste for scrapping, in conditions harmful to the health of workers and populations.

80. The complaints mention the fact that a correlation exists between working conditions and the exercise of trade union rights. Reference is also made to violations, inter alia, of the rights to adequate food, a healthy living environment and drinking water.

3. Right to information and to freedom of association, assembly and expression and right to participate

81. Freedom of association, trade union rights, freedom of assembly and expression and the right to participation and information seem to have been ignored or restricted, hindering the action of individuals and associations.

82. Even in countries where these rights and freedoms are recognized, civil society comes up against obstacles to their implementation.

83. The first obstacle is financial. NGOs do not have the necessary resources to carry out their work in satisfactory conditions.

84. The second obstacle is that defenders of human rights and the environment are subject to harassment, threats, dismissal, prosecution, arrest and imprisonment. Mention must be made of the opinion rendered by the Working Group on Arbitrary Detention on 20 May 1999 in the case of Mr. Grigorii Pasko, which held that freedom to engage in ecological criticism forms part of the right to freedom of expression and that damage to or protection of the environment are issues that know no boundaries, especially where radioactive pollution is concerned; consequently, it should be possible freely to engage in ecological criticism, which forms part of the right to freedom of expression "regardless of borders".

85. The third obstacle concerns the difficulty of timely access to pertinent, full and usable information. In the absence of information, the basic problem is exacerbated, with serious repercussions for human life and health and the environment. Before, during and after the incident, information of vital importance is either withheld, falsified, or provided late, in dribs and drabs or in such a way as to be unusable. Exercise of the right to receive and disseminate information is also impeded; governmental authorities justify this on national security grounds and transnational corporations by considerations of commercial secrecy (see the addendum to this report that discusses the interesting experience of the United Kingdom).

86. The fourth obstacle concerns the impediments placed in the way of popular participation. Countries that have developed procedures to permit participation are rare. In the majority of cases, populations with no resources confront enterprises which use every available means to bring their investment project to a successful conclusion (delaying tactics, lobbying, threats, bribes, corruption of officials, collusion with the authorities).

4. Racism and discrimination

87. The Special Rapporteur continues to receive communications, information and studies that reveal racism, discrimination and social injustice in "the distribution of waste", the export of wastes and the installation of treatment plants and industries that produce large amounts of wastes in developing countries, in territories of indigenous populations and areas with high concentrations of poverty, migrants and people of colour (see also E/CN.4/2001/55, paragraphs 66-71).

5. Impunity

88. In addition to the developments reported in document E/CN.4/2001/55, paragraphs 74-83, reference should be made to paragraphs 57-67 of this report.

VI. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

89. **The nature of the problem has not basically changed, despite efforts by the international community to combat the phenomenon. The OECD countries continue to be the main producers and exporters of dangerous wastes and toxic products. The stringent legislation they have adopted has led to an increase in the cost of waste-processing and elimination in these countries and has given rise to transboundary movements, initially to Africa, then to Latin America and South Asia and, more recently, to the Baltic States, Russia, Ukraine, Georgia, Slovenia, Romania, Poland and Albania.**

90. **International movements of wastes have increased owing to waste "recycling" programmes that make it possible to circumvent the ban introduced by the 1989 Basel Convention. The 1995 amendment banned exports of hazardous wastes, including waste for recycling, from OECD to non-OECD countries. The genuine application of the ban, in particular by the countries of the European Union, would seem to have contributed to a decrease in transfers from OECD countries to non-OECD countries.**

91. **While reported cases of transfers of wastes from developed to developing countries have declined, the problem has not been eliminated, given the persistence of clandestine movements and exports in the guise of recycling. Added to this is the emergence of new phenomena such as the export of contaminated vessels to developing countries for ship-breaking, trade in electronic waste and the transfer of "dirty" industries.**

92. **Another problem is the increased use of pesticides and other chemicals. Products that are banned, taken off the market, strictly regulated or not permitted continue to be produced and exported to developing countries with incentives to consume them (advertising, linking of project financing and aid, falsification of data). The most alarming cases concern intensive, uncontrolled use of chemicals, toxic agricultural products and persistent organic pollutants.**

93. **Similarly, there has been little change in the legal, economic, social and political factors contributing to illicit trafficking.**

94. **Disparities continue to exist between the legal standards of developed and developing countries. The latter have endeavoured to develop their domestic legislation, which continues to be difficult to implement in the absence of trained human resources, technical and financial means and an adequate infrastructure.**

95. **Trade liberalization, deregulation of international financial markets and the creation of new free trade zones are factors which, together with globalization, have furthered the removal of obstacles restricting trade in hazardous products and wastes.**

96. There have been positive developments in the area of legislation, with the elaboration of new conventions (Stockholm Convention, Rotterdam Convention and Aarhus Convention) and the strengthening of existing ones (amendment of the Basel Convention and establishment of a monitoring mechanism for its implementation).

97. The majority of these instruments, however, have not yet entered into force. Major States have not ratified them and many developing countries do not have the means to implement them without international cooperation and assistance.

98. These instruments have no international control system to fully involve the representatives of civil society in the monitoring of their implementation. The conventions are blind to the victims' perspective and do not provide for any remedies in the event of human rights violations.

99. Many countries do provide for remedies at the national level, although these may not always produce results.

100. The Basel Convention and national legislation in many cases consider illicit trafficking a criminal act liable to civil, administrative and criminal proceedings. In practice, the wrongful acts are rarely prosecuted or punished because of the difficulty of identifying all the links in networks, detecting the origin of the waste or products and attributing responsibility. Many prosecutors and judges are reluctant to bring legal proceedings and to sentence businessmen and firms for environmental crimes.

101. The communications received clearly show the adverse impact that these practices have on human rights and the role played by transnational corporations. They describe the difficulties the victims face in obtaining justice and reparation.

B. Recommendations

102. The Special Rapporteur welcomes the positive legislative developments that have occurred. She calls on States to ratify the international conventions, to cooperate fully in implementing them and to reinforce the capabilities of the secretariats of the international conventions.

103. Domestic and international regulations should be provided with effective control and implementation mechanisms. The promulgation of stringent laws to control transboundary movements should continue.

104. States should take more vigorous measures to reduce waste production, combat new flows of illicit trafficking and resolve the challenges posed by chemicals.

105. The Special Reporter welcomes the forthcoming entry into force of the Rotterdam Convention and calls on developed countries, few of which have ratified it, to become parties to this instrument. She calls on States to remain vigilant to the risks of fraudulent transfers, vitiated consent and relocation of activities.

106. **Chemicals that have been banned or taken off the market in developed countries should no longer be produced for export. This practice is unlawful in the light of human rights standards.**

107. **The domestic capacities of developing countries should be strengthened through financial assistance, technology transfers and diversified technical assistance. The regional centres that have been established should be adequately financed.**

108. **Mutual legal assistance and exchange of information should be facilitated to counter fraud, corruption and organized trafficking networks.**

109. **Governments should take preventive and deterrent measures, including administrative, civil and criminal penalties for individuals, enterprises and transnational corporations involved in illicit trafficking. Special efforts should be made to end impunity.**

110. **Illicit trafficking in wastes is a crime under the Basel Convention and the Bamako Convention. States should adopt measures to qualify wrongful acts, including those committed by legal entities, as criminal offences.**

111. **Transnational corporations should be required to comply with the laws of the host country and, if necessary, be held accountable for their acts under the law of the country of origin when it has more stringent standards. The countries of origin of multinational corporations should help countries that are victims prosecute and punish, inter alia with criminal sanctions, the perpetrators of offences.**

112. **Victims should have access to administrative and judicial proceedings in the exporting State. Non-resident victims should have access to the same remedies and benefit from the same treatment as residents.**

113. **Seminars should be organized for judges to raise their awareness of environmental offences.**

114. **Domestic compensation funds should be set up to deal with the obligation to re-export wastes and products exported in breach of regulations back to the country of origin. States should provide this fund with a facility to ensure the financing of the restoration of the environment and the compensation of victims when the authors of offences are unknown, cannot be found or declare bankruptcy.**

115. **Independent national commissions of inquiry endowed with judicial or quasi-judicial powers should be established in alleged cases of illicit transfer or attempted illicit dumping.**

116. **States should strengthen the role of national environmental protection agencies and of NGOs, local communities and associations, trade unions, workers and victims and provide them with the legal and financial means to act. The right to information and participation, freedom of expression, the right of association and legal remedies should be consolidated.**

117. **The Commission on Human Rights should consider means of implementing the Norms on the Responsibilities of Transnational Corporations adopted by the Sub-Commission and continue its codification efforts with a view to the adoption of a binding legal instrument.**

118. **Human rights bodies should be more systematic in addressing violations of rights associated with the practices of multinational companies, toxic waste and other environmental problems.**

119. **Cooperation between the Office of the United Nations High Commissioner for Human Rights, the United Nations Environment Programme and the secretariats of the multilateral environmental conventions should be strengthened in order to give impetus to the environmental approach to human rights and the human rights dimension of environmental standards.**

120. **To these recommendations are added those appearing in previous reports and the addenda thereto concerning in situ visits.**

Notes

[1] Adopted 22 March 1989, entered into force 5 May 1992; 158 parties by November 2003.

[2] Adopted 22 September 1995; 40 ratifications by November 2003.

[3] Adopted 10 September 1998; 50 ratifications by December 2003.

[4] See www.un.org/news/Press/docs/2003/sag188.doc.htm.

[5] Adopted May 2001; as of November 2003, ratified by 40 States. Needs 50 ratifications to enter into force.

[6] Adopted in Aarhus, Denmark, June 1998 entered into force on 30 October 2001. As of November 2003, 26 parties to the Convention.

[7] Decision I/7, available at www.unece.org/env/pp/compliance.htm.

[8] See E/CN.4/Sub.2/2003/12/Rev.2.

[9] See *Report of the World Summit on Sustainable Development* (United Nations publication, Sales No. E.03.II.A.1 and corrigendum).

[10] See progress reports and the final report on human rights and the environment prepared by Mrs. Fatma Zohra Ksentini (E/CN.4/Sub.2/1994/9), 6 July 1994, Sub-Commission on Prevention of Discrimination and Protection of Minorities, forty-sixth session.

[11] "Human Rights and the Environment - Conclusions of a meeting of experts", January 2002, OHCHR and UNEP, paragraph 10 (see www.unhchr.ch). See also issue paper from Earthjustice, "Human rights and the environment", 2003.

[12] Ibid., para. 8.

[13] Basel Convention, *Global Trends in Generation and Transboundary Movements of Hazardous Wastes and Other Wastes*, No. 02/14, November 2002.

[14] Jennifer Clapp, *Toxic Exports - The Transfer of Hazardous Wastes from Rich to Poor Countries*, Cornell University Press, Ithaca and London, 2001, p. 152. See also Basel Convention, *Global Trends*.

[15] *Global Trends*, Ibid.

[16] Basel Action Network, briefing paper No. 7, March 2003.

[17] Ibid.

[18] Ibid.

[19] See Jennifer Clapp, p. 11.

[20] Web site of the Secretariat of the Basel Convention (www.basel.int).

[21] "The International Crime Threat Assessment", Environment and Natural Resources Division of the United States Justice Department, 2000.

[22] See www.unepie.org.

[23] Article 1114.

[24] See the cases concerning *Metalclad v. Mexico*, *Ethyl Corporation v. Canada*, *Methanex v. USA*, *S.D. Myers v. Canada*, *TECMED v. Mexico*.

[25] Paragraph 31 (i) of the WTO's Doha Ministerial Declaration mandates negotiations on the relationship between existing WTO and specific MEA trade obligations.

[26] Friends of the Earth International, "Don't Let the WTO Trade Away the Environment", position paper, July 2003.

[27] Basel Convention Newsletter, 20 April 2003.

[28] Kendra Mayfield, United States Environment Protection Agency, "Old computers no longer junk", *Wired News*, 3 June 2002.

[29] Basel Action Network, "Exporting Harm: The High-Tech Trashing of Asia", February 2002.

[30] *Basel Convention Newsletter*, April 2003.

[31] The Waste Electrical and Electronic Equipment (WEEE) Directive 2002/96/EC and Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment (ROHS).

[32] The dismantling of a large vessel may involve the removal of many tons of hazardous wastes (*Basel Convention Bulletin*, October 2003).

[33] Greenpeace, "The Continuous Evasion of the 'Polluter Pays Principle'", September 2002 (www.greenpeaceweb.org/shipbreak/evasionpolluter.pdf).

[34] Jeffry Paul Luster, "The Domestic and International Legal Implications of Exporting Hazardous Waste: Exporting Naval Vessels for Scrapping", *The Environmental Lawyer*, vol. 7-1.

[35] Greenpeace press release, 7 November 2003.

[36] Basel Convention OEWG-II/4, "Legal aspects of the full and partial dismantling of ships".

[37] Human Rights Advocates; see, inter alia, E/CN.4/1998/NGO/44.

[38] European Environment Agency and United Nations Environment Programme, *Chemicals in Europe: Low Doses, High Stakes? - Annual message 2 on the state of Europe's environment*, 1998.

[39] *OECD Environmental outlook for the chemicals industry*, OECD, 2001.

[40] OECD, ibid.

[41] *The International Programme of Chemical Safety*, WHO Fact Sheet No. 87, Revised March 1998.

[42] WHO/FAO Working Group, 1990, *Public Health Impact of Pesticides Used in Agriculture*.

[43] PANAP 1999, *Annual Report*, Pesticides Action Network-Asia-Pacific.

[44] J. Jeyaratnam, Acute Pesticide Poisoning: A Major Global Health Problem, *World Health Statistics Quarterly*, 43:139-144.

[45] *Occupational Health and Safety in Agriculture*, International Labour Organization, 2000.

[46] All the following examples are listed in the report by the Environmental Justice Foundation, *What's Your Poison? - Health threats posed by pesticides in developing countries*, 2003, London, United Kingdom.

[47] N. Bensugan, 2000. *Agritoxicos: situacao extramamente grave pode iorar ainda mais*, Noticias Socioambientais, Brazil.

[48] M. Kishi et al., "Relationship of pesticide spraying to signs and symptoms in Indonesian farmers", *Scandinavian Journal of Work Environment and Health*, 21, pp. 124-133.

[49] P. Sodavy et al., *Farmers' awareness and perceptions of the effects of pesticides on their health*, FAO Community IPM programme field document, April 2000.

[50] *The International Programme of Chemical Safety*, WHO Fact Sheet No. 87, revised March 1998.

[51] Revised version adopted by the FAO Council in November 2002.

[52] Environmental Justice Foundation, *What is Your Poison?* (www.ejfoundation.org).

[53] Ibid., *Pesticides and Human Rights*.

[54] See submission from the Government of Guatemala, E/CN.4/2004/46/Add.1.

[55] Carl Smith, "Pesticide exports from U.S. ports, 1997-2000", *International Journal on Occupational and Environmental Health*, October/December 2001.

[56] Barbara Dinham, Sapha Malik (LLM), "Pesticides and Human Rights", *International Journal on Occupational and Environmental Health*, 2003.

[57] See *Pesticides and Human Rights*.

[58] Rupali Das, Andrea Steege, Sherry Baron, John Beckman, and Robert Harrison, *Pesticide-related Illness among Migrant Farm Workers in the United States, International Journal on Occupational and Environmental Health*, 2001; 7:303-312.

[59] See *Pesticides and Human Rights*.

[60] Human Rights Advocates, *Toxic Waste and the Fulfilment of Human Rights*, March 2003.

[61] Environmental Justice Foundation, *What's Your Poison?*

[62] Rabat, 8-12 January 2001, under the auspices of the Basel Convention Secretariat.

[63] Ibid., FAO.

[64] The GEF includes both donor and recipient Governments; see www.africastockpiles.org.

[65] The African Stockpiles Programme is a multi-stakeholder initiative intended to tackle the issue of pesticide contamination throughout Africa. The programme is expected to take 12-15 years to complete, with the 2003-2006 phase one involving about 15 countries; see www.africastockpiles.org.

[66] European Environment Bureau, Friends of the Earth, Greenpeace International, Greenpeace UK, Press release of 29 October 2003, www.chemicalreaction.org.

[67] See summary of cases submitted to the Special Rapporteur, in E/CN.4/2001/55/Add.1 and addendum 1 to the present report.

[68] See, for example, *Mining Ombudsman Annual Report 2003*, OXFAM Community Aid Abroad.

[69] See *Corporate Crimes*, Greenpeace International, August 2002.

[70] The Thor Chemicals case was summarized as case 1997/17 - United Kingdom/South Africa, in E/CN.4/2001/55/Add.1.

[71] Sir Geoffrey Chandler, former Chair of Amnesty International UK's Business Group.

[72] See ibid., paragraph 15.

[73] Richard Meeran, *Corporations, Human Rights and Transnational Litigation*, Castan Centre for Human Rights Law, 29 January 2003, www.law.monash.edu.au/castancentre/events/2003/meeranpaper.html.

[74] Richard Meeran, ibid.

[75] See Richard Meeran for a description of the three cases.

[76] *Lubbe & Others v. Cape Plc* [2000] 1 WLR.

[77] Human Rights Committee, general comment No. 6, on article 6, HRI/GEN/1/Rev.6, paragraphs 1 and 5.
